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24 **Attorneys for Plaintiff**

25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**
27 **WESTERN DIVISION**

28 **GARY L. SMITH, JR., on behalf of }
1 himself and all others similarly }
2 situated,**

3 Plaintiff, }
4 vs. }
5 **HARBOR FREIGHT TOOLS USA,**
6 INC., }
7 Defendant. }

8 2:13-cv-06262- JFW _____

9 **NOTICE OF RELATED CASE**
10 **AND REQUEST FOR RELATED-**
11 **CASE TRANSFER**

12 JURY TRIAL DEMANDED

13 **EXHIBIT 2**

1 KENNETH P. ROBERTS SB # 74955
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3 KENNETH P. ROBERTS,
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13 TORRANCE, CA 90504
14 Tel. (310) 750-3506

15 Attorneys for Defendant
16 A-CHECK AMERICA, INC.,
17 a California Corporation

18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

20 JOHN DOE,) Case No.: CV12-7960 MMM (AGR_x)
21 Plaintiff,)
22 vs.) Assigned to: Margaret M. Morrow,
23) Courtroom 780
24 A-CHECK AMERICA, INC., a)
25 California Corporation, and DOES 1-) DECLARATION OF AUTUMN
26 10, Inclusive,) CLEMMENS IN SUPPORT OF
27 Defendant) DEFENDANT A-CHECK AMERICA,
28) INC.'S MOTION FOR SUMMARY
) JUDGMENT AS TO PLAINTIFF'S
) SECOND AMENDED COMPLAINT
) AND EACH OF THE CAUSES OF
) ACTION THEREIN.

1 I, Autumn Clemmens, declare:

2 1. I am over 18 years of age. Unless otherwise indicated, the facts set
3 forth herein are personally known to me based upon my personal observation and,
4 if called as a witness, I could and would competently testify thereto under oath.
5 This declaration is given in support of Defendant A-Check America, Inc.'s Motion
6 for Summary Judgment as to Plaintiff John Doe's Second Amended Complaint and
7 Each of the Causes of Action Therein.

8 2. I am an employee of Harbor Freight Tools ("Harbor Freight"). I have
9 been employed by Harbor Freight since September 2008 as a member of the
10 Human Resources Administration team. Since August 2011, I have been the
11 Supervisor for the Human Resources Administration team. I am familiar with
12 Harbor Freight's hiring policies and practices. I am the Harbor Freight
13 administrator of the electronic applicant tracking system where Harbor Freight
14 maintains records of applicants for employment. As part of Harbor Freight's
15 standard hiring practices, Harbor Freight requires a background check of all
16 applicants before an employment decision is made.

17 3. In 2011, all background checks were completed and reviewed by the
18 Human Resources Administration team. On September 21, 2011, Gary L. Smith
19 ("Smith") applied online for potential employment with Harbor Freight as a Retail
20 Warehouse Associate in the Huntington Park, California retail store. Among other
21 duties, this position requires unloading trucks containing inventory, processing the
22 inventory, and stocking the shelves. In many instances, this requires climbing
23 ladders and the operation of, on, or around forklifts and/or other powered
24 machinery.

25 4. On October 28, 2011, Smith provided his written authorization to
26 obtain a background check from a third party provider. A true and correct copy of
27 the written authorization Harbor Freight obtained from Smith is attached hereto,
28 marked Exhibit A, and incorporated herein by this reference.

5. On November 7, 2011, Harbor Freight submitted a request for Smith's background check report to Defendant A-Check America, Inc. ("A-Check").

6. On or about November 9, 2011, while Smith's background check was pending and prior to Harbor Freight receiving the background check report, the position was filled with another candidate. The decision to fill the position with another candidate was made independently and without consultation from A-Check.

7. Upon filling any position, Harbor Freight's electronic applicant tracking system automatically generates an email notifying applicants that the position has been filled, but that the applicant's application would remain on file. I have no reason to believe that this e-mail was not sent to Smith.

8. Harbor Freight subsequently received Smith's background check report from A-Check, which reflected multiple records of driving under the influence during the preceding seven years. For safety purposes, Harbor Freight's practice is to consider recent DUI records in making employment decisions for warehouse associate positions involving the use of ladders and forklifts and/or other powered machinery. To let Smith know that his application would no longer be kept on file, on November 14, 2011, Harbor Freight submitted a request for A-Check to create and send an adverse employment notification to Smith.

9. The decision to no longer keep Smith's application on file was made independently and without consultation from A-Check.

10. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is signed on June 21, 2013, at Calabasas, California.



Autumn Clemmens

EXHIBIT A

HFT CAREERS Store #: 373 Job ID: 5778 Job Title: Sales



Instant Access to a
World of Information!

A-CHECK

To Whom It May Concern:

I, Gary L Smith Jr.

hereby authorize A-Check America, Inc. and/or its agents to make an independent investigation of my background, which may include my character, general reputation, personal characteristics, or mode of living in connection with an application of employment with Harbor Freight Tools. The scope of the report may include information concerning my driving record, civil and criminal court records, credit, workers' compensation record, education, credentials, identity, past addresses, social security number, previous employment, and personal references.

I authorize and request any present or former employer, state/federal government office, state department of motor vehicles, FBI Bureau, school, police department, court records, including those maintained by both public and private organizations, financial institution or other persons having personal knowledge about me, to furnish A-Check America, Inc. with any and all information in their possession regarding me for the purpose of confirming the information contained on my Application and/or obtaining other information which may be material to my qualifications for employment. I am willing that a photocopy of this authorization be accepted with the same authority as the original, and I specifically waive the need to receive a written notice for disclosure of information from any present or former employer who may provide information based upon this authorization.

I release all parties and persons from any and all liability for any damages that may result from furnishing such information to Harbor Freight Tools as well as from the use or disclosure of such information by the company or any of its agents, employees, or representatives.

The following is my true and complete legal name and all information is true and correct to the best of my knowledge:

Print Full Name: Gary Lewis Smith Jr.

Print Maiden Name or Other Names Used:

Present Address:

City: _____ State: CA Zip Code: _____

Date of Birth (for I.D. purposes only) 1978 (MM/DD/YYYY)

Social Security Number: 765

Driver's License Number: B7H1483 State of Issuance: _____

A-Check America will need to contact you if additional information is needed to process your Background Investigation. Please provide a cell and/or alternate phone number and email address where we may contact you.

Cell Phone: (323) 401 - 7591 Alternate Phone: (_____) _____

Email Address: lmgargary@gmail.com

Signature: Gary L Smith Jr.

(Please do not type in name; your hand-written signature is required above)

Date: 10/28/11

California, Minnesota and Oklahoma Residents Only:

If a consumer background report is ordered, would you like a free copy of the report mailed to your home?

Signature: Gary L Smith Jr.

YES

NO

Date: 10/28/11

NOTICE: This form is the property of A-Check America, Inc. No alterations to its content may be made without the prior written consent of its author. Any changes made without A-Check's authorization are considered a breach of contract.

SCAN HR #31 or FAX (805)445-4904

REDACTED

KP 7/10

CONFIDENTIAL

A-Check 000005

1 PROOF OF SERVICE
2

3 **STATE OF CALIFORNIA,**]ss.
4 **COUNTY OF LOS ANGELES]**

5 I am employed in the county of Los Angeles, State of California. I am over
the age of 18 and not a party to the within entitled action; my business address is
6355 Topanga Canyon Boulevard, Suite 403, Woodland Hills, CA 91367-2102.

7 On June 26, 2013, I served the foregoing document described as
8 DECLARATION OF AUTUMN CLEMMENS IN SUPPORT OF DEFENDANT
A-CHECK, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO
PLAINTIFF'S SECOND AMENDED COMPLAINT AND EACH OF THE
CAUSES OF ACTION THEREIN on the interested parties in this action:

9 [X] by placing "true copies" thereof enclosed in sealed envelopes with postage
10 thereon fully prepaid, in the United States mail at Los Angeles, California
addressed as follows:

11 Office of The Attorney General
State of California
12 300 South Spring Street,
Los Angeles, CA 90013-1230

13 I am "readily familiar" with the firm's practice of collection and processing
14 correspondence for mailing. It is deposited with the U.S. postal service on that
15 same day in the ordinary course of business. I am aware that on motion of party
served, service is presumed invalid if postal cancellation date or postage meter date
is more than one day after date of deposit for mailing affidavit.

16 [] BY PERSONAL SERVICE [] I caused such envelope to be hand-delivered
17 to the addressee. Executed on _____, 19_____, at Los Angeles, California.

18 [X] (FEDERAL) I declare that I am employed in the office of a member of the bar
of this court at whose direction the service was made.

19
20 I declare, under penalty of perjury, under the laws of the State of California,
that the foregoing is true and correct. Executed on June 26, 2013, at Woodland
21 Hills, California.

22 **ROBERTA L. RAMIREZ**

23 Type or Print Name

Signature

